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ishwar Chand Vs. Additional District Magistrate (Civil Supply)/R.C.E.O., Kanpur Nagar and Anohter

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Court : Allahabad

Decided On : Feb-08-2000

Reported in : 2000(1)AWC841

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 - Sections 3, 3A, 9 and 12; [Hindu Succession Act, 1956](#) - Sections 8

Appeal No. : C.M.W.P. No. 53191 of 1999

Appellant : ishwar Chand

Respondent : Additional District Magistrate (Civil Supply)/R.C.E.O., Kanpur Nagar and Anohter

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Harish Chandra Srivastava and ;Dinesh Chandra Srivastava, Advs.

Judgement :

Sudhir Narain, J.

1. The petitioner has challenged the order of vacancy dated 25.11.1999 passed by the Rent Control and Eviction Officer, respondent No. 1.
2. One Ram Sahodar was tenant of a portion of premises No. 12/470, Gwaltoli, Kanpur Nagar. He died in the year 1998. Respondent No. 2 applied for allotment with the allegations that as Prem Das, son of Ram Sahodar-the tenant, had purchased another portion of the same premises in the year 1986 and he is residing therein, the accommodation in question be treated as vacant. The Rent Control and Eviction Officer called for a report from the Inspector. The Inspector submitted a report that Ishwar Chand, the petitioner, grandson of Ram Sahodar, was found in its possession. Respondent No. 1 issued notice to the petitioner to show cause why the disputed accommodation be not treated as vacant.
3. The petitioner filed objection stating that his father, Prem Das, had separated from his father, Ram Sahodar, in the year 1985 and had also purchased another portion of the same premises in the year 1986. The petitioner, as grandson of Ram Sahodar, is residing in the disputed accommodation. His grandfather, Ram Sahodar, also executed a Will in his favour on 3.10.1989 whereby he bequeathed all his rights and title in all his properties. It was further stated that as the landlords of the house, namely, Khem Chand and Gyan Chand had entered into an agreement to sell the disputed premises on 20.2.1987 and also handed over possession in pursuance of the agreement, his possession cannot be treated as unauthorised. The Rent Control and Eviction Officer, considering the objection, declared it as vacant. This order has been challenged in the present writ petition.
4. Learned counsel for the petitioner contended that Ram Sahodar had executed a Will in favour of the petitioner on 20th February, 1987 and he is entitled to Inherit the tenancy rights on the basis of the Will. It is settled law that tenancy rights cannot be transferred by a Will in favour of any person vide *Ratan Lal v. Additional District Judge, Bulandshahr and others*, 1979 ARC 251 ; *Devendra Kumar v. Illrd Additional District Judge and others*, 1980 ARC 519 and *Abhinandan Prasad Jain v. District Judge, Saharanpur and others*, 1982 (1) ARC 708.
5. The next submission of the learned counsel for the petitioner is that at the time of death of the grandfather of the petitioner, he was residing in the disputed

premises with him and as such he inherited the tenancy rights. It is admitted to the petitioner that his father Prem Das is alive, who purchased another premises in the year 1986 and admittedly he had shifted there. He is not claiming that he has inherited the tenancy and is continuing in possession of the disputed premises. The petitioner cannot inherit the tenancy in preference to his father who is still alive. Section 3A defines the tenant as follows :

'3 (a) 'tenant', in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death ;

(2) in the case of non-residential building, his heirs.

6. The contention of the learned counsel for the petitioner is that after the death of the tenant, any of his heirs who normally resided with him at the time of his death is entitled to inherit the tenancy rights and where a person who is entitled to inherit the tenancy was not normally residing with the tenant at the time of his death, such other person who comes in the category of an heir under the law is entitled to inherit the tenancy if he was residing with the tenant at the time of his death. The personal law will determine as to who is the person under the law to inherit the tenancy. Section 8 of the Hindu Succession Act. 1956 provides that the property of a male Hindu dying intestate shall devolve according to the provisions mentioned under the Act-

(a) firstly, upon the heirs, being the relatives specified in class 1 of the Schedule ;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule ;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased ; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

7. Section 9 of the Act provides that among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs ; those in the first entry in class II shall be preferred to those in the second entry ; those in the second entry shall be preferred to those in the third entry ; and so on in succession.

8. The son has preference to succeed to the exclusion of grandson. The inheritance takes place on the death of the tenant. In case he is survived by four sons, such son shall inherit the tenancy who was residing with his father but in case the tenant dies leaving behind him the only son but he was not residing and shifted elsewhere but his grandson is living, he will not inherit the tenancy as for inheritance two conditions are required to be fulfilled ; firstly, that he inherits the rights of the deceased tenant to the property under the personal law and secondly, he was residing at the time of death of the tenant in such residential building. In *Om Prakash and others v. Prescribed Authority and others*, 1984 (2) ARC 634, Hon'ble Mr. Justice S. Saghir Ahmed (as he then was) dealt with this question and held that a grandson in the lifetime of his father would not inherit the properties of the grandfather dying intestate.

9. The father of the petitioner, Prem Das, having purchased another premises and residing therein since before the death of his father, was not entitled to claim the tenancy rights and when his father is not a tenant as contemplated under Section 3(a) of the Act, the petitioner cannot claim any right to occupy the disputed premises as a tenant.

10. The last submission of the learned counsel for the petitioner is that the landlords of the premises in question, Khem Chand and Gyan Chand, had entered into an agreement to sell the property in dispute in favour of Ram Sahodar, his grandfather, and therefore, he is entitled to continue in possession of the premises in dispute. Mere agreement does not itself create any interest in the property. The agreement itself provides that the possession of the property is not being given but it will be delivered at the time of the execution of the sale deed. The sale deed has yet not been executed. The petitioner, in view of this averment in the agreement, cannot claim any right to continue in the possession of the property after it has

been found that the disputed accommodation is vacant under the law.

11. I do not find any merit in the writ petition. It is accordingly dismissed.

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